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EVOLUTION OF THE RELATIONSHIP BETWEEN TANGATA WHENUA, THE CROWN AND RESOURCE MANAGEMENT.

Presented in partial fulfilment
of the requirements for the degree
of
Master of Science in Resource Management
in the University of Lincoln
by

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ABSTRACT

This paper outlines the relationship between tangata whenua and the Crown to natural resources as envisaged by the Treaty of Waitangi 1840 and the Resource Management Act (RMA) 1991. The RMA has been hailed as a progressive Act which perhaps embodies a new paradigm arising from a shift in western philosophy, but whether the Act deserves such praise is questionable. Maori participation is limited to consultation which is dependent on the goodwill and sincerity of local government. It is argued that the recognition of Maori values is hindered by the monocultural nature of the present institutional structures. By incorporating an alternative ethic it is suggested that participation can be more fundamentally and thoroughly achieved.

AUTHORS NOTE

ITI REAREA, TEITEI KAHIKATEA, KA TAEA

Ko Tuhoe toku iwi,
Ko Tama Kai Moana me Ngati Whare oku hapu,
Ko Maungapohatu te maunga,
Ko Mataatua te Waka,
Ko Taiepa te whanau,
Ko Todd toku ingoa.

Nga mihi nui ki a koutou e tirotiro mai nei ki enei kupu, hei whakaaro mo tatou.

At one stage during the writing of this paper, my thoughts drifted back to school days when I remember being told to write about the experiences of life. Between that past and this present I now found that 'self' has been lost in the academic dialogue of objectivity, and the art of distancing one's own values, from the written expression of the problem at hand. I find that continuing in the field of resource management without expressing something of a social conscience is difficult. My 'personal experiences' have not generally been valid as 'evidence' in the academic system but they remain an integral part of my social reality. Within this report I am trying to achieve a balance between that personal world view and the standards of scholarship. I offer no apology if this paper reflects that bias.

Heoi ano, Tena Tatou Katoa.

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TABLE OF CONTENTS

CHAPTER ONE: INTRODUCTION	1
1.1 Problem Statement.....	1
1.2 Aims and Objectives.....	3
1.3 Methodology.....	3
1.3.1 Literature.....	3
1.3.2 Interviews	5
1.4 Outline.....	6
1.5 Scope of Study	6
 CHAPTER TWO: THE LEGACY OF A TREATY	 7
2.1 The Treaty of Waitangi	7
2.2 Two Texts	7
2.3 Article 1.....	8
2.4 Article 2.....	8
2.5 Article 3.....	9
2.6 Implications.....	9
 CHAPTER THREE: MAORI DEPENDENCY ON THE WELFARE	
STATE.....	11
3.1 Early Conflict Of Interest.....	11
3.2 Maori Land Title.....	11
3.3 Migration.....	12
3.4 The Urban Experience	13
3.5 The Welfare State Threatened.....	14
3.6 From Welfare State to Freemarket Approach.....	15
3.7 Government Reforms and Devolution	17

3.8 Conclusions	18
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CHAPTER FOUR: REFORM OF LAW RELATING TO NATURAL

RESOURCES	21
4.1 Previous Recognition of Maori Interest in Planning Issues.....	21
4.2 Local Government Reform.....	22
4.3 Devolution of the Control of Natural Resources.....	22
4.4 Management of Resources	23
4.5 Assumptions	23
4.6 Sustainability.....	24
4.7 The Development of Western Thought.....	25
4.8 The Resource Management Law Reform Process (RMLR).....	26
4.9 Three Perspective’s of Participation	28
4.10 Maori Response to RMLR	31
4.11 The Ownership of Natural Resources	32
4.12 A Duty of Active Protection.....	33
4.13 Rangatiratanga	34

CHAPTER FIVE: PROVISIONS FOR MAORI UNDER THE

RESOURCE MANAGEMENT ACT 1991	36
5.1 The Resource Management Act 1991 (RMA).....	36
5.2 Management Decisions.....	37
5.3 Methods of Participation.....	39
5.4 Consultation.....	40
5.5 Conclusion.....	42

CHAPTER SIX: RESPONSIBILITIES OF LOCAL GOVERNMENT

UNDER THE RESOURCE MANAGEMENT ACT 1991.....	43
6.1 Initiatives of Local Councils.....	43

6.2 Cultural Mapping and the Wellington City Council	43
6.3 Canterbury Regional Council Draft Management Plan.....	44
6.4 Closer Relations.....	45
6.5 Effective Iwi Participation.....	46
6.5.1 Minimum Standards.....	47
6.5.2 Resources.....	47
6.5.3 Problems with Consultation.....	48
6.6 Property Rights.....	49
6.7 Delegation of Treaty Responsibilities.....	49
6.8 Transfer of Authority	51
6.9 Paradigm Shift.....	51
 CHAPTER SEVEN: BEYOND CONSULTATION.....	 52
7.1 Cultural Expression.....	52
7.2 An Alternative Approach	55
7.3 Partnership.....	57
7.4 Compensation.....	57
7.5 Structural Conformity.....	58
7.6 Maori Values and the RMA.....	59
7.7 Reciprocity.....	60
7.8 Methods of Reciprocity.....	61
7.9 Conclusions	62
 BIBLIOGRAPHY	 65

CHAPTER ONE

INTRODUCTION

1.1 Problem Statement

This paper is a discussion of the evolving relationships between central and local government and Maori. The process of consultation between the tangata whenua and local government in the management of the natural resources of New Zealand is examined to evaluate the implications.

This study is not an in depth investigation of Maori views of the environment. In the limited space available it has been decided that some of the foundations of Pakeha culture provide useful insights however to clarify aspects of the cross-cultural debate in this country concerning "management" and "ownership" of natural resources.

The Treaty of Waitangi was signed between the English Crown and many of the independent iwi of this country. "Kawanatanga" was ceded to the Crown and "rangatiratanga" was guaranteed to remain with iwi. Such guarantee was not honoured. Furthermore, the Crown has systematically eroded the authority of iwi. Maori are now heavily dependent on the Crown and have a substantially reduced resource base. Colonisation finds expression as a causal factor behind the increasing psychological, physical and spiritual health problems of Maori people.

The Resource Management Act 1991 (RMA) acknowledges the legal right of Maori as tangata whenua to participate in the management of the natural resources of New Zealand. This participation is facilitated by a process of consultation. This

paper will discuss the reform process, the act and how consultation is being implemented. Resource management will then be examined in a wider historical and social context.

Maori are unlikely to make significant gains under the RMA, or any other western approaches to the environment if attempts are made to increase their participation which fail to address their cultural values and allow their expression. The nature of western institutions and decision-making needs to be examined in order to understand the causes of tensions between Pakeha and Maori. Some fundamental assumptions from which society legitimates actions need to be challenged.

Western ideology has been challenged by marginal theories such as post-modern theory and feminist theory. Groups whose values are not reflected in the dominant ideology, through their own narratives, have built up a body of mutually supportive literature. This represents their convictions as being distinct, self-identifying groups who have rejected western culture and its claim to moral or ethical superiority. They have sought alternative agenda based in their own experiences.

For those championing the causes of, not only Treaty issues, but race, gender and class concerns in the 1990's, the question arises as to what has been achieved and what has not changed. The cynic might say that the 'system' has not changed at all. In New Zealand, Maori are now consulted over many issues. The problem remains that monocultural and patriarchal notions are still a part of the decision-making process hindering the sincerity of consultation.

The RMA allows for consultation yet this could be interpreted as a direct breach of Article 2 of the Treaty of Waitangi, as Maori are guaranteed the right to plan for and manage the environment under the Treaty.

1.2 Aims and Objectives

This paper will be discussing the evolving relationship of local government and tangata whenua with regards to resource management. Discussion will focus on the following points:

- 1) Highlighting the references within the Treaty of Waitangi to future resource management in New Zealand.
- 2) Maori dependency on the Crown
- 3) Maori participation in the reform of law relating to natural resources.
- 4) The Resource Management Act 1991 and the implications for Maori.
- 6) Reciprocity and the Resource Management Act 1991.

1.3 Methodology

1.3.1 Literature

A great deal of the material which forms the core of this study consists of a literature review of material about the Treaty and resource management. The Treaty has always been a subject of cross-cultural debate and so material about western society and culture is included, as are some of the notions of a cultural expression termed 'Maori'.

The emphasis recognises that Maori are a distinct group because of the presence of the many different cultures in New Zealand. It will be used in the context of this

paper as referring to a collective group who are the tangata whenua of New Zealand. In New Zealand society attributes have been assigned to those of 'Maori' descent which to the dominant cultural group confers the identity of Maori as 'other'. This term used in feminist methodology identifies a trait of western society as conferring this status on every distinct group besides those who are European, male, in the middle to upper income level.

It has usually been Maori who have come under the microscope. This debate between the two parties to the Treaty, the Crown and Iwi, has been conducted predominantly in the language of one. This paper is bringing together a number of thoughts which have already been assimilated by many participants in resource management. It is hoped that this 604 will encourage more research into this area in the future, especially amongst students from the Centre for Resource Management.

The author argues that for the obligations of the Treaty to be met there must be a new approach to Maori-Pakeha Cross-cultural issues. Maori have been one of the most studied peoples in the world. Continuing discontent would suggest that the benefits accruing from this research has been limited. It is suggested that reflexivity has a basis in Maori culture and that Maori have had much to reflect on as to their identity since colonisation. What is needed is for a similar commitment from Pakeha to do the same. The history of Maori/Pakeha relationships in New Zealand serves no purpose in assigning blame or guilt on these generations. That is, if we fail to rectify those actions of the past which pervade our lives in the present. Only by conducting a sincere historical and philosophical of our present predicament will we arrive at an appropriate solution. That search for an answer becomes the focus rather than the solutions. Maori go through this process continually and it is not this writers aim to provide any guide as to the wider

Maori world view. Clarification' it is argued needs to come from Pakeha history and philosophy.

1.3.2 Interviews

Personal interviews were also conducted. As much as possible the author attempted to leave the information in the hands of those who hold that knowledge. There was much hesitation involved. Especially in conducting interviews with Maori. As one of the most studied races in the world with apparently little direct benefit Maori are familiar with researchers taking control of information under pretence and sometimes unwittingly and using that benefit for personal gain. The interviews were written, but I would have preferred to tape and transcribe. As much as possible, constrained by deadlines, I informed participants that the information would only be seen and used by myself, and for this particular assignment only. If the use of the material was sought for any other project then permission had to be sought by myself to do that. Further, any of the people were entitled to ask for their input to be removed from the project at any time. It is hoped that research employing such methods may encourage more participation of Maori people in research which empowers rather than disempowers them. This requires on behalf of the researcher an elevation of the 'subject' as the source of knowledge. There is a need for humility within a field which requires an acceptance of the notions of reciprocity, where one respects the knowledge passed on to them. While the thoughts and conclusions conveyed over all reflect the views of the author it is hoped that the spirit in which the participants knowledge was given is also conveyed.

Finally there has been a personal attempt to edit out language reflecting the mechanistic world order, rising from the tradition of the Descartes and Hobbes. This supports the view that the environment is not a part of our lives but shares the qualities of a machine.

1.4 Outline

Chapter Two looks at what the Treaty of Waitangi said about the relationship between iwi and the Crown.

Chapter Three seeks to clarify the roots of Maori dependency on the Welfare state.

Chapter Four considers aspects to Maori participation in the reform of the legislation relating to natural resources.

The Resource Management Act and the implications for Maori are examined in Chapter Five which concludes that a new ethic is required to achieve a partnership between local government and Maori.

Chapter Six promotes an ethic of reciprocity which may enable an improvement in cross-cultural dialogue over Treaty issues.

1.5 Scope of Study

This study is not an in depth analysis of the relationships of tangata whenua and local governments.

The focus of the paper is not on solutions, rather it is focused on the processes involved in the local government/iwi relationship and how the search for solutions might be improved

CHAPTER TWO

THE LEGACY OF A TREATY

2.1 The Treaty of Waitangi

The Treaty of Waitangi was signed between the independent iwi of this country and the Crown. The Crown represented a British monarchy who ruled over some very distant lands. Early settlement after the Treaty was relatively peaceful with little conflict between Maori, in their collective identity as iwi, hapu and whanau, and Pakeha. The Treaty of Waitangi was a solemn agreement conferring on Pakeha many new rights. Maori were to receive all the benefits of Pakeha knowledge and culture while retaining their own authority. Maori were enthusiastic about the new approaches of the colonists and were prepared to share their own insights about politics, nature and social relationships.

2.2 Two Texts

There were two versions of the Treaty of Waitangi. One version was written in the Maori language, as Te Tiriti o Waitangi, signed by 50 chiefs at Waitangi on February 6th 1840, and later a further 500 chiefs around the country. The second was an English version, signed by 39 Waikato Chiefs on April 26th 1840.

The two texts varied in their expression of exactly what Pakeha and Maori were guaranteed. There were important differences in the vocabulary of both texts which can be interpreted to give quite different meanings. These differences may have reflected the different cultural and social perceptions of the two peoples and

the difficulty of cross-cultural dialogue. Alternatively, this may have represented the lack of ability of those translating the English text, or even a conspiracy to veil the true nature of Pakeha settlement (Steven, 1989). Both treaties have three articles. These may be described as the kawanatanga article, the rangatiratanga article, and the tikanga article (O'Connor, 1988, 1991: 8, Gray et al [1988]).

2.3 Article 1

This stated that kawanatanga will be held by the English Crown. In the English version Maori cede to the British Crown "absolutely and without reservation all the rights and powers of sovereignty". The Maori text did not convey this sense of sovereignty with the words it used. Kawanatanga (or governorship) did not truly convey the absolute authority conveyed in the English use of the word 'sovereignty'. There has been some debate as to whether the term mana could have conveyed that more clearly, and the question arises as to whether the iwi would ever cede their mana. Whatever the character of the authority ceded to the Crown, this guarantee was made in exchange for the protection by the Crown of Maori rangatiratanga (Ngawha Geothermal Report, 1993: 39).

2.4 Article 2

In affirming the status of the collective authority of iwi Article 2 recognised rangatiratanga. The Maori text guarantees "tino rangatiratanga o o ratou kainga me o ratou taonga katoa". This has been translated as "the unqualified exercise of their chieftainship over their lands villages and all their treasures (Kawharu: 1989). The English version preserves "full exclusive and undisturbed possession of their lands and estates, forests, fisheries and other properties . . . ". Clearly in

both texts Maori would retain their authority over their taonga above and beyond those rights bestowed under Article 3.

2.5 Article 3

Maori were to have the same rights and privileges as those conferred upon British subjects. The Maori text used tikanga to refer to the 'rights' in the English text. One issue which is unclear is whether in conveying kawanatanga in Article 1 this was to recognise Maori status as an equivalent level to British subjects, who are subject to (or below) the Crown, implying that Maori would be subject to the imposition of British laws, customs and norms on Maori. 'Subjects' in the English text is translated as "... nga tangata o Ingarani", or "the people of England"(Kawharu, 1989).

Being subject to the Crown was different from the human rights guaranteed the British people by their Sovereign.

2.6 Implications

For over 100 years colonial rule has denied the existence of the Treaty and the right of Maori to exert tino rangatiratanga was not recognised. Acknowledgment of the Treaty was not always in the vested interests of the majority of the population of New Zealand. Therefore, Maori views and values were not incorporated into legislation.

Currently there is a movement towards a greater responsiveness towards Maori, their values and important issues relating to the Treaty. The Treaty and its

principles are often incorporated into legislation and the policy statements of government departments. Although this may provide Maori with a means for recovery of rangatiratanga this process of recovery will still be conducted within the structure of a monocultural frame of reference. This is not conducive to Maori identity as tangata whenua.

Chapter Three will focus on Maori assimilation into society and the loss of rangatiratanga and the resultant dependency on the state. Dependency on the state is not conducive to rangatiratanga. Discussion will include the origin of western thought processes and how these have shaped current institutions.

Chapter Four is a discussion of the Resource Management Law Reform process. This includes principle concepts of resource management and issues of interest to Maori.

The Resource Management Act 1991 will be discussed in chapter Five. More specifically the provisions for Maori within the Act and the concept of consultation will be examined.

Chapter Six is a discussion of initiatives undertaken by local government and the effectiveness of Maori participation and the consultation process.

Chapter Seven introduces the concept of reciprocity and how it could increase the effectiveness of the consultation process.

CHAPTER THREE

MAORI DEPENDENCY ON THE WELFARE STATE

3.1 Early Conflict Of Interest

The “communality” of Maori and the “individuality” of the colonial has been a source of conflict from the earliest days of British colonisation. Early colonial policy was focused on the acquisition of native land. Sir Francis Dillon-Bell, a New Zealand political figure of the 19th century, believed that Maori were uncivilised and that their way of living was an obstacle to settlement (Ministerial Advisory Committee, 1986: 6).

“The first plank of public policy must be to stamp out the beastly communism of the Maori!” (Ministerial Advisory Committee, 1986: 6).

The settler government’s Maori policy between 1895 and the late 1930’s was a blend of assimilation, paternalism, integration and exploitation (Ministerial Advisory Committee, 1986: 10).

3.2 Maori Land Title

Ownership of Maori land was handed down through generations with the individual portion of land passing to each successive child. The memorial of ownership, Native Land Act 1873, recorded the individuals who had an association with Maori land. This act did not recognise property rights of the collective whanau, hapu and iwi and was not considered a legal title. Legal and

financial institutions did not acknowledge that whanau, hapu and iwi could own land. Ownership was vested in the individual members of those whanau, hapu and iwi. The Maori concept of communal ownership was not recognised. This made "development" of Maori land difficult. Often, after several generations the people's individual interest in the land was reduced to an uneconomic fraction which neither communities nor the individual could use. Extensive areas of Maori land were left idle and unprofitable (Hunn, 1960: 8).

By the 1940's Maori could not be sustained by their present resources. "There is an ambiguous picture of a people whose land resources are inadequate, so that a great and increasing majority must find other means of livelihood" (H. Belshaw from Sutherland, 1940: 184). Most of New Zealand was now under either Crown control or in private hands, principally as a result of large scale land sales in the South Island, during the mid to late 19th century, and the workings of the Maori Land Court in the North Island.

3.3 Migration

In the decade before World War II 90% of the Maori population was rural (Walker, 1990: 197). After the War there was a significant shift of the largely rural-based Maori population to the major cities. There were several factors behind this 'urban migration'. The Maori population which had been declining up until the early 1900's was now rising. There was not enough land to support this population increase. At the time of the signing of the Treaty of Waitangi in 1840 Maori had possession of just under 27 Million acres of land (Asher and Naulls, 1987: 41). By 1920 there were only 4 787 686 acres of land remaining under Maori title. Most of this land was marginal and of little economic value. Failure by

western philosophies of ownership to recognise the complex Maori concepts of communal ownership of property restricted the use of Maori land.

3.4 The Urban Experience

By the end of 1945, the towns and cities seemed to offer a different life with new opportunities. Maori seemed optimistic about a future in the urban environment.

The Maori who came to the cities were employed mainly in the primary economic sector and in the labour intensive industrial manufacturing industries. Belshaw saw them as migrants "... in strange cities forced into adjustment while divorced from the moral and material support of their communities" (H. Belshaw in Sutherland, 1940: 195). Migration to the city removed Maori from the strong traditional base present in the rural areas.

The 1950's and 60's was a time of full employment in New Zealand. Despite full employment there were vast differences in the living conditions of Maori compared to Pakeha. These visible disparities were a concern in a time of growing prosperity in New Zealand (Cant, 1992: 7). The government legislated to alleviate Maori social problems. The Maori Social and Economic Advancement Act 1945 was replaced by the Maori Welfare Act 1962 which set up the New Zealand Maori Council and led to the substitution by district councils for tribalism (Ministerial Advisory Committee, 1986: 21).

The Hunn Report, a government report from the Deputy Chairman of the Public Service Commission and Acting Secretary for Maori Affairs J. K. Hunn, was published in 1961. It recognised the difficulties Belshaw and others had foreseen in the 1940's, with the dilemma of a growing Maori population and a limited

economic base to support this growth. The report took the approach that assimilation would give Maori the best opportunities in contemporary society.

"(4) Urbanisation of the Maori is inevitable, critics notwithstanding. Farming will never support more than a handful; the rest must enter the Towns in search of work. Far from being deplored, "the urban drift" can be welcomed as the quickest and surest way of integrating the two species of New Zealand.

(5) If closely watched and actively nurtured, urbanisation is more likely than rural segregation to prevent a "colour problem" from arising in New Zealand as the Maori population expands "(Hunn., 1960: 14).

Government funded initiatives such as state housing and Maori were encouraged to move to the cities because rentals were relatively inexpensive. This would accelerate the process of 'integrating' Maori.

3.5 The Welfare State Threatened

The collective welfare action of the welfare state had been present from the 1890's, when the first modern welfare measures were introduced. No records were kept of individual contributions. Benefits have commonly been passed on through general taxation as no special social security fund was established by the government. As a result by the time of the election to Government of the Labour Party in 1984, the Welfare state was a significant financial burden on central government.

3.6 From Welfare State to Freemarket Approach

When the Labour government was elected in 1984, the welfare state was rapidly dismantled. The country was faced with mounting unemployment because our living standards, we were told, were economically unsustainable. Maori had been under conditions of extreme economic and social poverty before the election of the Labour government and the result of increased unemployment was significant. As a distinct group Maori were affected disproportionately. Social problems were intensified due to dislocation from traditional tribal areas. Maori had undergone displacement from what had been the strong community support in the rural areas before the War. Expression of Maori cultural values and the Maori language declined under pressure from monocultural values, especially those of education system. This was difficult to maintain in the urban environment divorced from those.

Maori did not have the resources to sustain themselves let alone compete in the market economy envisaged by the Labour Minister of Finance Roger Douglas and Treasury. Most of the natural resources were now held by the Crown or were in private ownership. Maori were highly represented in almost every area of social deprivation. From "owning" all of the resources in Aotearoa they had been reduced to a situation of abject poverty in a little over 150 years.

Maori people continued to lobby for greater participation in the economy. In response to a meeting held by government to discuss economic directions for New Zealand in early 1984 Maori called for their own hui. The Maori Economic Summit, Hui Taumata, was held in late 1984. This was well before the real impacts of the Labour Party's economic policy became apparent. The hui expressed concerns over the amount of dependency Maori had on the state. The hui brief was:

"...to reach an understanding of the nature and extent of economic problems facing Maori; to examine the strengths and weaknesses of Maori in the current position; to discuss key policy issues and to seek endorsement of policies leading to a truly equal status for Maori in the economic and social life of New Zealand; and to obtain the participants' commitment to help and cooperate in dealing with the difficulties facing Maori." (cited in Kelsey 1993: 247).

Maori aspired to move away from a position of dependency. The establishment of an economic base for Maori was seen as a part of this strategy. Economic independence meant Maori could anticipate an end to the over-representation of Maori in the lower socioeconomic group (Ka Awatea, 1991: pp 12-46). In October 1984, following Hui Taumata (The Maori Economic Development Summit Conference), the final communique highlighted concerns about the operation of the Maori Reserves Lands Act and the Town and Country Planning Act (1977). These acts were restrictive to Maori development and it was felt that they needed to be amended to reflect Maori economic and cultural aspirations (Levine: 201).

The economic ideology followed by the 1984 Labour Government and the following National government limited the State response to these statistics. Consideration of Treaty responsibilities was constrained by this economic approach (Kelsey 1990: 263). The economy remained the central focus of government policy and all other factors were put within that context. The twin policy of economic restructuring and monetary disinflation are recognised as involving increased unemployment at least in the short term (Dalziel, 1990: 2). The effects were felt more severely in the semi skilled or unskilled occupations. Labour Government policy of allowing other countries more direct access to the New Zealand economy, by reducing protective tariffs, led to higher levels of unemployment. The disproportionate numbers of Maori in this sector of the labour force led to a disproportionate number of unemployed Maori.

During the mid 1980's the shift was from what was called Keynesian economic theory toward a monetarist approach (ibid).

"Keynesian theories are based upon the assumption that the market lacks the capacity to secure favourable profit conditions without regulatory state interventions, whereas monetarist theories assume that the accumulation process is self-regulating and therefore the state should not intervene in the free market" (Codd, 1993: 7).

There is evidence to suggest that Maori participation in the New Zealand political economy was reduced relative to non-Maori. This may be related to a failure of the free market system. Ka Awatea cites these barriers as a failure to acknowledge Maori traditional economic and social units of whanau, hapu and iwi. Maori were unable to raise capital on land with multiple ownership. With so little land remaining in Maori ownership there was a further concern at using the land as collateral for loans.

Government was philosophically committed to reducing the role of the state, which was seen as inefficient. The state was performing many tasks which the private sector could handle more efficiently. The approach of government to natural resource planning was to reduce the role of central government.

3.7 Government Reforms and Devolution

There was to be substantial reform and change in the public sector under the fourth Labour Government. Devolving government services was a part of a comprehensive policy to restructure and reduce the role of central government in New Zealand (Boston et al, 1991: 1). The rationale for this decentralisation was

that it produced a greater flexibility and responsiveness, creating an environment where decisions could be controlled more effectively (Codd, 1993: 17).

It was proposed that the Department of Maori Affairs be devolved. Maori demanded that the government recognise the iwi, and redirect the former department's resources to them (Ibid: 322).

Attempts to devolve responsibilities to iwi had been outlined in the discussion paper *He Tirohanga Rangapu* (Partnership Perspective's), and the policy document *Te Urupare Rangapu* (Partnership Response). The lack of responsiveness of government to Maori was highlighted as a concern, as was the failure to recognise iwi as legitimate decision-making bodies for Maori. The policy of devolution saw the demise of the Department of Maori Affairs and the creation of *Te Tira Ahu Iwi* (Iwi Transition Agency) and *Manatu Maori* (Ministry for Maori Affairs). *Te Tira Ahu Iwi* would, over five years see the transfer of government programmes to iwi while *Manatu Maori* would ensure that government was more responsive to its Maori clients.

The Resource Management Act became law in 1991. Since then Maori have attempted to come to terms with the ramifications of the new structures and the new relationship with local government.

3.8 Conclusions

If Maori had retained resources as envisaged by the Treaty contract, the opportunities might have existed in the rural areas for economic development. As it was, many were forced to leave the country for the cities and indeed many left willingly. Large housing estates, with the added incentive of cheap rentals,

became the homes for many. While the economy was able to support them during the affluent 1960's and 70's, unemployment and a depressed economy in the 1980's left many families vulnerable.

Maori became increasingly reliant on the economic structures of the welfare state. In moving to the cities the lure of new opportunities was to result in a level of dependence for Maori people which had not existed before.

What has been clear from the 1960s (refer Hunn Report 1961) is that Maori have had tremendous difficulties since becoming an urbanised people. Attempts to assimilated them into Pakeha culture, devoid of their Maori identity has patently failed (Ministerial Advisory Committee, 1986). Calls for an increased responsiveness from government departments to their Maori clients have also been limited (State Services Commission, 1993).

In 1960 the Hunn Report stated,

"... it would be a good thing if the Maori people, with customary realism, could come to regard the ownership of a modern home in town (or country) as a stronger claim to speak on the marae than ownership of an infinitesimal share in scrub country that no one has ever seen" (Hunn:, 1960 8).

The last 10 years have seen the transformation of a welfare state to that of a market driven state with services now distributed within a criteria of choice where consumers can elect the services they want. The problem is that those services are generally not aimed at Maori needs, and the economic situation of Maori people leaves many to decide on a regular basis which basic needs they are to forego. Efficiency criteria for the distribution of resources is not necessarily the best

measure of the capacity to deliver social services. The Government focused on fiscal concerns as its primary policy goal.

A renaissance in Maori identity in the urban setting from the 1970s took on a new urgency as Maori sought to achieve what the welfare system had failed to deliver: self-determination. This could only be achieved if rangatiratanga was recognised and therefore the collective strength of iwi could assert itself to achieve its own state of welfare. In order to achieve this, Maori would still require an increased economic base and the land resources were still recognised as inadequate to achieve any self-determination.

If this path was to be followed then all the inherent contradictions between the people would have to be dealt with in an open and transparent way. This had to be more than just an exercise in redressing the grievances of Maori. If Maori were to become an integral part of society and assimilation was no longer acceptable then Maori and Pakeha would have to confront these issues.

CHAPTER FOUR

REFORM OF LAW RELATING TO NATURAL RESOURCES

4.1 Previous Recognition of Maori Interest in Planning Issues

The rights of Maori land owners had been recognised since the 1957 Planning Tribunal case Watson v. Wairoa Borough 1 NZTPA 47. Departures from local zoning provisions were granted to allow partitions of Maori land where the district scheme would not be detrimentally affected (Cotton: 1). This allowance for departure to accommodate Maori interests was expanded in 1977 where the Tribunal acknowledged the right for Maori to live in proximity to their marae (ibid) (Morris v. Hawkes Bay County Council).

The Town and Country Planning Act 1977 (TCPA) contained a provision which was to provide a basis for the protection of Maori values. Section 3 (1) (g) declared that the "relationship of the Maori people and their culture and traditions with their ancestral land" was a matter of national importance and should be recognised and provided for. Within two months this section came under scrutiny in the Planning Tribunal. The case was Knuckley v. Taranaki County Council and it was concluded that 'ancestral land', had to have been continually held by Maori people (Cotton: 1). It retained this narrow definition in case law until 1987. The High Court judgement of Holland J in Habgood v. Royal Forest and Bird Protection Society Inc (Unreported M 655/86) ruled that a relationship with ancestral land could exist even if the land title in legal terms had passed to the ownership of another party (Cotton: 4, Matunga: 3). This highlights the problem of courts defining Maori concepts. The Knuckley case appears to reflect the narrow and monocultural view of the courts. A monocultural framework will

not find an appropriate solution because if it will always fail to identify the interests of Maori. It also highlights the fact that in not specifying a clear end to the statute the judiciary will resort to the status quo to ensure clarity is maintained. Thus the status quo remains unchallenged by the legal system as the legitimate reality.

In the past, Maori views of the environment had been marginalised. Their rights as guaranteed under the Treaty of Waitangi were not upheld. A reform of planning legislation offered a chance to change the status quo.

4.2 Local Government Reform

Regional government reform initiated in 1988, would leave many of the resource management functions at the regional level of government under the assumption that it would perform these tasks more efficiently and responsively than central government. The Crown continued to assume ownership and control of resources while the focus of the Resource Management Law Reform remained on the best guidelines for the regional councils to use this authority in light of the significant environmental, social and economic concerns faced by the country.

4.3 Devolution of the Control of Natural Resources

Maori were concerned at central government moves to devolve the Crown's Treaty responsibilities to regional and territorial government. A new legal structure for resource management was discussed. Environmental management was to be devolved through a three-tier structure of central, regional and local government. The relationship of tribal authorities to this structure was not clear. This

suggested additional powers would be given to local government and this would affect iwi.

4.4 Management of Resources

The RMLR process was set up to rationalise the area of managing natural resources. To justify this statement two assumptions have to be accepted. Firstly, that the natural environment can be “managed”, and secondly that people have a right to assume that role.

“Whatever kinds of resources we refer to, we can be confident that they have no rights, no character, no life, and no values of their own. The only values attached to resources lie in their utility and wealth they provide for their managers” (Meeker, 1987: 31).

These views may derive from a belief that the whole natural order was created for the sake of humanity (cited in Gray et al, Appendix I). This gave the human race authority over natural resources (ibid).

4.5 Assumptions

The word “resource” reflected an attitude of detachment and was useful in its capacity to represent so many different subjects, from land, air and water to the human being (ibid). Managers talking about the achievements of their ‘human resources’ dehumanise those very people as if they were “... disembodied talents under their control” (ibid). The way things were named and the language that was used was often more revealing of a deeper cultural attitude rather than just

convenient symbols to communicate ideas. The language used in dialogue will define the outcome. These assumptions in language have importance beyond mere anecdotal interest. The values represented by language have perpetuated a society where aggressive, competitive, rational and the analytic values have been more highly valued than their counterparts - the responsive, co-operative, intuitive and synthesising values (Capra: 21).

4.6 Sustainability

Environmental issues are now firmly on the agenda of governments around the world as a response to the environmental 'crisis' which the world faces. The problem is characterised by a high growth rate in the human population and an increase in economic activity (World Resources Institute, 1992: 1). These two factors have the potential to put enormous stress on natural resources and natural systems. These problems can no longer be categorised as local, controllable phenomena. The boundaries of nation states offer no protection against threats such as "global warming". "The Brundtland Report" focus world attention to the environmental problem in 1987. After three years of investigation the World Commission on Environment and Development focused attention on the extent on the environmental "crisis" and proposed that nations would have to develop a greater sense of their relationship to each other so that they might develop strategies between nations (McChesney, 1991: 4). The solution outlined a concept of "sustainable development". This was the main theme of the report. It had been criticised because it promoted economic growth as a way of resolving wider environmental problems. However, economic growth was an ethic associated with capitalism and identified as a primary cause of the present "crisis". This association of "sustainable development" with economic growth could therefore

be seen as a contradiction in terms, considering the limited resource base which the Earth provides.

4.7 The Development of Western Thought

Writers have analysed in depth the origins of many of western societies world views (Merchant,1980, Tisdell, 1989, Durie, 1990 and Gray et al) . Western societies have had the tendency to exclude 'self' from decisions about the environment and other people. That is a major assumption behind not only resource management but many government methods of manipulating populations to achieve policy goals.

Before 1500 the experience of most people in the world was one where their lives were dependent on the spiritual and physical sustenance provided by the environment. The needs of the community were paramount over those of the individual. The main goal of medieval science was to understand the meaning and significance of things rather than to control or predict their behaviour. The scientific revolution encapsulated by the discoveries of Copernicus, Galileo, Bacon and Newton changed the emphasis to one of control and domination of nature. The philosophy of Descartes expounded a mechanistic reductionist view of the world which still dominates Western thought (Merchant, 1980: 203-205).

Not only does the policy reflect the Cartesian view but also the Kantian position where ultimately individual people are the primary part of any society rather than the collective. From this originates some sense of morality and the individual becomes in need of protection from the many. People are to be protected as individuals which is justified by an inherent right to personal freedom. People should not be subject to physical or mental abuses. Further, the property which

they own should be protected. The autonomous individual became the basis Western society not the collective group.

This is a fundamental difference from Maori society where the individual is an integral part of a community and has responsibilities to this community. By identifying oneself as belonging to a particular group, community, whanau, iwi or hapu is a way of informing others of where you stand and acknowledging where you come from. As well as giving yourself a place to stand it puts an onus on you, and some sense of responsibility for your behaviour, as it will reflect on the wider group. By invoking these responsibilities it emphasises self as an integral member of the whole .

The romantic movement emerged as a reaction against the rise and expansion of industrial capitalism in the eighteenth century. The movement began to explore a new paradigm in response to environmental problems (Pepper, 1984). The message was that humans did rely on the environment for their well-being. Any development was dependent on this.

4.8 The Resource Management Law Reform Process (RMLR)

The RMLR began in 1988 with a search for the fundamental principles of a sustainable management strategy. The process produced an enormous amount of literature about past environmental policy and planning as well as options for the future. The purpose of RMLR was to integrate the laws relating to resource management and to set up a resource management system that promoted the sustainable management of natural and physical resources. The reforms could draw together previous legislation relating to land development and town planning, water rights, and soil and water conservation. Previously these were

often contradictory, and ineffective in protecting the environment. The reforms promoted the ethic of sustainable management of natural resources such as the use, development and protection of resources and the provision of effective methods to avoid or reduce the adverse effects of activities on the environment (Randerson et al, 1990: 4).

Maori had several concerns with the methodology of RMLR. Principally they were related to issues of the ownership of resources and the principles of the Treaty. Devolving the obligation to honour the Treaty, to regional and territorial government, raised a concern that these obligations would be weakened. The discussion document "Direction for Change" outlined principles and objectives which might be relevant (Gray, 1988: 6). In the previous decade government had begun to show a "good will" in implementing its Treaty obligations. In revisiting the Treaty an extensive set of principles has developed which proposes to guide this implementation process in the contemporary environment. The guarantees of rangatiratanga clearly expressed notions of Maori retaining authority over their resources. The discussion document "Direction for Change" eluded to what the main issues were, what were the best ways to ensure that the Treaty and the element of Maori authority were recognised in decisions over resource management and how can Maori interests be included as an integral part of the resource management process (Gray, 1989: 3).

The Labour party lost the election in 1990 before the Resource Management Bill could be passed. The National party became government. A review was conducted by the new government. The Review Group reported to the Minister for the Environment in January 1991. To achieve the purpose and principles of sustainable management substantial redrafting was deemed to be required with the intension of "increasing certainty and workability", "striking a reasonable balance between the present and future requirements for the use, development

and protection of natural and physical resources" and "defining the relationship between biophysical and socio-economic considerations" (Randerson, 1990:4).

In terms of the Crown-iwi relationship the Bill had stated that "in achieving the purpose of this Act, all persons who exercise functions and powers under this Act have a duty to take into account the special relationship between the Crown and te iwi Maori as embodied in the Treaty of Waitangi" (Randerson, 1990: 11). The term "special relationship" were deemed to create difficulties of interpretation by the Review Group. They considered that it would be much clearer if any obligations were related to the principles of the Treaty, the advantage being that decisions of the Waitangi Tribunal, High Court and Court of Appeal were available as a guide to interpretation. Several principles of the Treaty were acknowledged by the Review Group such as the principles of partnership, reciprocity and mutual benefit. While the Review Group could offer no clarification as to what these principles might mean in a pragmatic sense they expressed confidence that the existing principles at least provided guidelines for decision-makers. The Review Group saw that defining the nature and extent of Treaty duties may resolve any problems of interpretation however this issue was left for consideration.

4.9 Three Perspective's of Participation

Early in 1988 the Public Participation Task Group was formed to advise 'on what are the possible objectives and principles for public participation in resource management' (O'Connor, 1988: 4). The group came up with three main perspective's or paradigms on public participation (ibid: 5). They were called the Treaty of Waitangi perspective, the Property Rights / Market perspective and the Citizens' Rights perspective.

The Treaty of Waitangi Perspective (TWP) focused on fundamental constitutional issues and takes much of its view of society from a historical perspective, looking to the Treaty as a constitutional document on which this nation was founded. It is claimed that the Treaty document has not been honoured by the Crown, and therefore our society continues to be run within a monocultural framework. By defining the world from a solely western point of view this is a breach of the obligations specified in the Treaty of Waitangi. The conflict with Maori notions of the environment are enormous. In terms of RMLR, the notion is clearly that Maori are guaranteed the right to participate in the management of their own resources.

In the Property Rights/Market Perspective (PR/MP) the primary role of government is the maintenance of contract. Individuals regulate society through the marketplace. If individuals are motivated to become involved they will do so because of self-interest and may join together with other individuals to further their own interests. This reflects a world view in which people are constantly seeking to better their own ends and compete against each other for their own personal welfare.

The potential conflicts are apparent since from a Treaty-based perspective this acceptance of the status quo as a reasonable starting point fails to acknowledge the constitutional questions raised by the Treaty perspective and the grievances over the present distribution of wealth in New Zealand.

From a Citizens' Rights Perspective (CRP) everyone must be allowed access to decision-making processes. All interested parties must be involved in this, and public participation is very much the primary focus of this view. It reflects all the inherent views of majoritarianism and the right of the masses to decide the fate of the minority.

The government's adoption of the PR/MP approach conflicted with the interests of Maori. Privatisation, which became a major initiative of central government economic policy, threatened the redress of Maori grievances to the Waitangi Tribunal by selling Crown assets which might be the subject of claims.

This evolution to a primarily market-led economy created a lot of conflict in the 1980's. The CRP and TWP on the one hand supported the ideological merits of including the population in the decision-making process while, the PR/MP were focused on a top-down approach with the 'expertise' of Roger Douglas and the Treasury directing policy on the basis of ideological criteria rather than canvassing the support of the people of New Zealand. [It was Maori who were forced to undertake the major battle against privatisation of the national estate. The New Zealand Maori Council v AG [1987] (1 NZLR 641) was the culmination of attempts by Maori to see that the Crown retained ownership of resources. It is argued by Kelsey (1990) that both the Property Rights/ Market Perspective and the Citizens Participation Perspective can be contrasted with the Treaty perspective. As different strategies for resource exploitation, which both led to a denial of the 'full authority of tangata whenua to control their lands, fisheries and taonga for the good of the present generation and those to come'. (Kelsey, 1990: 189).

During the phase one of RMLR there was little discussion on the Treaty.

"As the groups gravitated towards some middle-ground compromise between the market and citizens participation perspective's, positions based on the Treaty appeared extreme and untenable". (Kelsey: 191)

There was also significant conflict between the Citizens' Rights perspective and the Treaty perspective. Chapman related that,

"For a modern democracy cannot function, happily and equitably, if there is legally-sanctioned preferment of groups, or if there is conferment of privilege and advantage, by law, according to who may have come first, who may be from this or that ethnic group, or, again, howsoever" (New Zealand Law Journal (1991): 228).

4.10 Maori Response to RMLR

The negative experiences Maori had during the debate over the devolution of Maori Affairs earlier in 1988, may have contributed to the poor response of Maori during Phase One of RMLR. Despite extensive Maori participation in the process of devolution of the department of Maori Affairs Maori views were not reflected.

In Phase One there were few Maori submissions. As a response to the discussion paper 'Direction for Change' 693 submissions were received. Only eight were from Maori groups (Gray, 1988: 54). In Phase Two principles of active protection, guardianship, and enhanced Maori participation were raised but the discussion document was simplistic and unsophisticated on Treaty issues. The overriding objective of Phase Two was to decide which level of government which would carry out resource management decision-making. Iwi structures were once again not included. Maori were to be accommodated within the present structures (Kelsey: 196-197).

In the midst of the RMLR, one notable expression of Maori concern was a hui held at Taumutu in June 1988. The Taumutu hui was held to discuss Maori views of the RMLR process and the implications for Maori. The hui saw that the question of ownership of natural resources had to be established before any management regime was set up. They wanted fully resourced consultation with iwi (Kelsey, 1990: 193). The view of the hui was that rangatiratanga was not recognised by the

RMLR process and there were serious concerns with many of the underlying assumptions.

Kelsey believed that the underlying philosophy behind RMLR was not to address the needs of Maori.

"..the driving force of RMLR was not the (T)reaty. It was the need for an economically, administratively, and environmentally efficient system which met the needs of the 'nation as a whole' ." p 187 Kelsey

The Treaty was marginalised in the debate. While there was support to have the principles of the Treaty incorporated in the resource management legislation it was provided that these did not override the need for sound resource management (Kelsey, 1990: 195).

4.11 The Ownership of Natural Resources

The difficult issues of ownership of resources and the redress of Treaty grievances remained to be resolved, but it seems likely that Citizen's Rights, Free Market and Treaty perspective's will continue to shape policy responses to Treaty issues. Clearly the main concern was the separation of the core issues of the ownership of resources and the management of them. The Treaty is central to the application of the RMA. The Treaty guarantees Maori rangatiratanga over resources. If the relationship between management of resources on the one hand and ownership of them on the other, had been clarified this would have reduced factors of uncertainty for Maori and local government. Issues of ownership and the Treaty grievances should have been resolved before there was a reform of resource management. The government bypassed the issue of ownership and focused on

the use of resources. A paper produced in January of 1988 said that in RMLR “there are strong arguments that ownership should be settled first” (Kelsey, 1990: 189).

The economic philosophy which had separated the role of policy formulation and implementation by government departments, to avoid ‘conflicting goals’, was now used to give the role of managing natural resources to local government without transferring the ownership.

“The crux issues are defining Maori resources and the extent of tribal autonomy over them” (Barns, 1988: 2.400). There has been an assumption by government that they have legitimate ownership of certain resources. For example, the development of the individual transferable quota management system for regulating New Zealand fisheries, Maori rights, guaranteed by the Treaty of Waitangi, were not protected (Clark et al, 1988: 348). These views came from a wide range of government departments and illustrated that concerns for the apparent paradox of the ownership/management regime, in the light of Treaty guarantees, was not only being questioned by Maori. The government was confident that tino rangatiratanga and kaitiakitanga could be separated from ownership. These issues would be addressed by increasing Maori participation in the local authorities.

4.12 A Duty of Active Protection

The failure to recognise and protect rangatiratanga constitutes a further breach of the Crown's duty of active protection. This means the protection of iwi and their styles of decision-making as well as all factors which constrain rangatiratanga save perhaps some residual duty under the Crown's rights of kawanatanga.

These systems still exist but the extent of their authority has been diminished through the process of colonisation.

In a Treaty of Waitangi seminar in 1988 (Anastasiou et al, 1988: 6) Blanchard's perception of Maori self-government was that Maori had the right to run their own tribal business and cultural affairs and the right to have a fair voice in the decision-making processes of central and local government. This includes appropriate representation on decision making bodies so that weight is given to Maori values and concerns (rather than rights). Blanchard does not see these as unreasonable requests, but believed it was impossible to have "one set of laws for the Pakeha and another for the Maori" (ibid).

4.13 Rangatiratanga

By accepting that Article 2 of the Treaty of Waitangi guaranteed rangatiratanga as a right of self-governance, tribal authority could be recognised and responsibility to directly administer Maori resources devolved to them. The Treaty itself is quite clear on issues of resource management. Maori rights under the Treaty to tino rangatiratanga over their natural resources in this country can be drawn from the wording of both the English and Maori versions of the Treaty.

The concept of rangatiratanga and the legitimacy of the definition used by the Crown and the courts has been questioned. Reports of the Waitangi Tribunal and the Crown Principles define 'full authority' in the Treaty as lacking the characteristics of,

"... an independent political/legal constraint firmly grounded in tikanga Maori. Rather it is always seen in relation to political/legal processes based in tikanga

Pakeha. As such it is always defined in a way which rejects its sovereign nature and confines its concomitant rights to areas manageable within a pakeha constitutional status quo".

Nga Kaiwhakamarama I Te Ture (1991).

In terms of resource management and the text of the Treaty of Waitangi, ". . . the words are most important . . ." (Wai 22 Muriwhenua Report: 302). Both versions of the Treaty were clearly expressing the same rights (Gray et al: 10).

"Strictly speaking, when the meaning of the treaty is clear, it is 'applied' not 'interpreted'. Interpretation is a secondary process which only comes into play when it is impossible to make sense of the plain terms of the treaty. . ." (McNair, Lord. *The law of treaties*, Oxford University Press, Oxford, 1961 cited in Gray et al: 12).

Both versions state that the Crown has a duty to guarantee Maori possession and authority over their natural resources (ibid: pp. 10-11

CHAPTER FIVE

PROVISIONS FOR MAORI UNDER THE RESOURCE MANAGEMENT ACT 1991

5.1 The Resource Management Act 1991 (RMA)

The RMA potentially had important implications for Maori participation as regards to natural resource management. Maori could again, it seemed, participate in the management of the natural resources as hapu and iwi.

The RMA, although providing a legal means for Maori to participate in the management of natural resources it failed to allocate resources to support Maori to enable them to have an effective role. In the Act, Maori issues are mentioned as the fifth matter of national importance, where regional councils must recognise:

The relationship of Maori and their culture and traditions with their ancestral lands, water, sites, waahi tapu, and other taonga.

Section 7 of the RMA states that those who exercise functions and powers under the Act “shall have particular regard to” among other responsibilities ‘kaitiakitanga’, which is defined in Section 2 to mean:

The exercise of guardianship; and, in relation to a resource, includes the ethic of stewardship based on the nature of the resource itself.

This identified fundamental differences in philosophy between Maori and Pakeha.

The Maori world view was unable to distinguish between a separate ethic for social behaviour and for the environment. They were inextricably linked. Kaitiakitanga is part of a complex cultural relationship between social, cultural and the economic needs of the iwi. This has arisen out of long association of iwi in their tribal locations (Minhinnick, 1989: 1).

Not all Maori in contemporary society will have developed such a relationship, and many Pakeha view themselves as 'nurturers of the environment' (Walker, 1990: 250). The fundamental differences are still valid however. Maori were not merely 'protectors' of the environment, they were 'kaitiaki'.

5.2 Management Decisions

Section 8 of the RMA stated that all management decisions must take account of the principles of the Treaty.

In achieving the purpose of this Act, all persons exercising functions and powers under it, in relation to managing the use, development, and protection of natural and physical resources, shall take account of the principles of the Treaty of Waitangi (Te Tiriti o Waitangi).

Councils were required to take into account the principles of the Treaty in all cases, even in those where it does not appear relevant to the decision (Soloman and Schofield, 1992: 29). Local and regional authorities are required to consult with the tangata whenua regarding policy statements.¹ When preparing or changing district or regional plans, local authorities must do the following:

¹First Schedule of the Resource Management Act, (1) (d).

- (a) As a matter of national importance, recognise and provide for the relationship of Maori to their ancestral land, water, sites, waa[i]hi tapu and other taonga.
- (b) Have particular regard to Kaitiakitanga.
- (c) Take into account the principles of the Treaty of Waitangi 1840.
- (d) Consult with the tangata whenua.
- (e) Have regard to any relevant planning document of an iwi authority.
- (f) Where regional statements are involved, matters of resource significant to an iwi authority must be stated.

(Anastasiou et al, 1988).

These criteria are very general. The lack of definition and guidance to how each of these ideals can be incorporated creates a problem. Concepts like kaitiakitanga, the principles of the treaty and relationship of Maori to the environment are not well understood and in the realm of local government often not considered relevant. What is consultation? How are authorities supposed too consult? Who needs to be consulted? How is consultation supposed to be considered?

Local authorities are required to show clear evidence that they have consulted iwi to fulfil the obligations under Section 8. The major concern about consultation is whether the view of iwi is integrated into local authority decisions. The lack of guidance to the obligations of authorities as regards to consultation will make little difference to the present system if those administering it have no clear idea what their duties are (Richie, 1991).

5.3 Methods of Participation

Iwi management plans can provide a way for iwi to be more pro-active in resource management. As various iwi make a stance on certain issues it provides the potential to discuss hypothetical situations with local councils with the possibility of reaching agreement on issues which have not yet arisen and with the benefit of no time pressure.

Another way for iwi to be heard within local government is by representation within organisations, on local bodies and committees. Iwi then have a representative who is present throughout the discussion and decision-making process, and who can respond immediately to the concerns of those groups. There is also the advantage of getting a close relationship and familiarity with the staff and structures of an organisation not just their official representatives. Personal skills and support are very important for those who are placed in such a position. A disadvantage is that these individuals can be isolated and burdened with unrealistic workloads. At a time when Maori resources in particular are stretched, the ideals of effective representation and the reality of human frailty are often difficult to reconcile. Provision for Maori representation on regional planning committees, under the Town and Country Planning Act, disappeared with the passing of the RMA (Blackford and Matunga: 15).

Some advisory committees have been established. These have met with mixed reaction (*ibid*). The Hawke's Bay Regional Council Maori Standing Committee provides an interesting example, where this type of committee was established, only to be systematically marginalised (Kerins, 1992: pp 119-136). The formal structures taken by local and regional councils have created procedural barriers. Often the staff are not versed in Treaty issues pertaining to the council's work. The participation of the iwi in regional council policy-making has therefore been

limited. Many regional authorities have set up similar committees and while they can have an important advocacy role, there is concern that these committees could diminish in some way the authority and sovereignty of the iwi (Blackford and Matunga, 1991: 15). Whether such committees will take a primary role under the RMA is left to the discretion of iwi and the territorial councils involved.

Failure to define adequately what Maori participation means has led to difficulties of interpretation for the various participants in resource management. There is a need to clarify what the obligations of the Crown are to iwi. This may be left up to the planning tribunal to specify, but it will vary from council to council and iwi to iwi.

Recognition of Maori as tangata whenua requires an alternative approach by the Crown. The Treaty affirms that iwi are not just another interest group or minority. The Crown may choose to delegate many powers and responsibilities to local authorities. These powers include the ability to grant consents over resources, ownership which may be claimed by Maori. If the decision makers are truly going to account for the Treaty then this may mean not acting in a way which would create new grievances or exacerbate existing ones (Soloman and Schofield, 1992: 29).

5.4 Consultation

The relationship seems primarily to be facilitated by a process of consultation. Arnstein examines consultation in her 'ladder of citizen participation', and argues that there are many methods of involving 'citizens' in decision-making processes. These different strategies provide varying access for citizens to have a say in the

decisions made by more powerful individuals and groups in society. Arnstein highlights the problem with some approaches to public participation.

"There is a critical difference between going through the empty ritual of participation and having real power needed to affect the outcomes of the process." (Arnstein: 216-217).

Consultation is seen as 'degrees of tokenism'. The characteristic of this rung in the ladder is that by itself consultation offers no guarantee that the views of those being consulted will be taken into account.

"...if consulting them is not combined with other modes of participation, this rung of the ladder is still a sham since it offers no assurance that citizen concerns and ideas will be taken into account." (Arnstein, 1969: 216)

Arnstein argues that for consultation not to be merely a hollow gesture, it must be possible for it to have a clear effect on the outcome of a decision making process. By confining participation to consultation the outcome can be restricted. This has led to much discussion concerning the nature of the 'minimum standards' of consultation under the RMA. This debate has been over the meaning of consultation and it has not been restricted to the iwi/Crown or the iwi/local government relationship. It has bearing on the guidelines for the process and the relative priority of this function as compared with other roles.

"Effective consultation is a process agreed upon by both tangata whenua and the local authority.

In many cases, consultation processes and institutional structures, such as standing committees, are developed before the parties know what they actually want from them" (Fraser: 50).

If it is important that there is not a rush to show 'progress' or 'results' as the issue of what do we want to resolve or achieve by consultation may be lost. In the next chapter issues of cross-cultural significance will be examined as well as attempts so far to include tangata whenua in the decision-making processes of resource management.

5.5 Conclusion

The active relationship set up under RMLR between Maori and the various regional councils defined a relationship between iwi and local government which was extremely tenuous. Maori are given access to decision-making in the RMA. This process hinges on consultation as a way of facilitating this relationship.

CHAPTER SIX

.c. RESPONSIBILITIES OF LOCAL GOVERNMENT UNDER THE RESOURCE MANAGEMENT ACT 1991

The RMA, while weak in specifying an exact relationship does offer iwi more opportunities to have their issues put on the agendas of regional councils. The major barriers are the personal values of the Councillors and staff, and the dependence on the support of the non-Maori majority of voters. As a minority in a democratic process, Maori are very much reliant on the whims and prejudices of people in the Pakeha majority.

6.1 Initiatives of Local Councils

Some councils have provided training mechanisms for their staff and pro-actively supported iwi development under the guiding principle of taking account of the Treaty of Waitangi (Parliamentary Commissioner for the Environment, 1992). Education could increase the awareness of council responsibilities to the Treaty and each staff members own personal responsibilities as employees of the council. Long-term objectives could be negotiated to give meaning to the relationship and for the wider purposes of sustainability to be realised.

6.2 Cultural Mapping and the Wellington City Council

A study was conducted to ascertain the views of council staff towards their workplace. The goal was to assess the effects of legislation changes to the councils

activities (Human Resource Associates (NZ), 1993: 1). A cultural map was seen as important in order to ensure the satisfaction of staff with their personal positions, and as employees of the council. This would lead, at a later phase, to the development of change to the organisation. Staff agreed that they had little understanding of the Treaty and what it means in relation to the Councils functioning (Human Resource Associates (NZ), Appendix: 13). It was suggested that there needed to be more education of staff on Treaty related issues, and that the work of the Council and that of the Maori Committee and Maori Unit of the Council required greater time, resources and power (in terms of voting and veto rights), to give them a more effective role (ibid: pp. 14). It was further suggested that the Treaty be incorporated in the Council's strategic plan and mission statement (ibid).

6.3 Canterbury Regional Council Draft Management Plan

The Canterbury Regional Council have, by incorporation of the ideals of the RMA and section 4.4 and section b of the Draft Regional Policy statement, shown some commitment to consult with tangata whenua and a willingness to consider the philosophy and practices of the iwi. In the Canterbury Regional Council Draft Policy Statement 1993 (p 13), for example, councils must consider the principle of partnership, principle of active protection and the principle of utmost good faith. These principles are consistent with those of the Waitangi Tribunal.

To have genuine consultation the process requires that sufficient information be provided to the consulted party, so that they can make intelligent and informed decisions. The process must have sufficient time for both participation of consulted party and the genuine consideration of advice.

The Canterbury Regional Council have agreed with the tangata whenua on a process of meaningful consultation. As outlined in the Canterbury Regional Council Draft Policy Statement 1993 the council has tried to summarise Ngai Tahu attitudes towards the environment, highlighting the particular concerns of the various runanga. This includes a specification of issues which will require consultation with the iwi (Canterbury Regional Council, 1993: 19-41). The 10 day reply period is a concern, however. This may not be long enough for iwi representatives to 'meaningfully' consult with the iwi.

Further discussions between the regional council and the local iwi representatives will be needed in order to clarify the present position. It is a concern that in all of this discussion there is no clear statement of the nature of the relationship between Ngai Tahu and the Canterbury Regional Council. There is no mention of a commitment from the council to work closely together with the iwi in regional policy formation.

6.4 Closer Relations

Maori have an opportunity through the RMA to establish a close working relationship with local government. In one local council in Canterbury, Selywn District Council, this has enabled real communication and participation (Anake Goodall, pers. comm.). Maori representatives are given the same funding as a counsellor (sitting fee and mileage). There is now an ability to make trade-offs and have a meaningful negotiation between local government and iwi.

This type of approach is naturally restricted to councils who are prepared to debate the issues with some sincerity. Not all councils will favour this approach and the effect of individual personalities and prejudice on either side should not

be underestimated. Although the strength of consultation is in the informal relationships these relationships are not specified within the RMA

Perhaps it was envisaged that a 'soft' statute approach would be more amiable to relationships considering the emotional debate surrounding the Treaty. The present economic approach of successive governments in defining the problems of New Zealand in almost purely economic terms have limited the scope for Treaty debate and negotiation which effectively separates the nature and extent of the grievance so the two are not related.

The Resource Management Act 1991 follows the grass roots approach (Ingram and Schneider 1990) to the implementation of the Treaty. The goals are therefore unclear and the responsibility for implementation has been left to local government in consultation with tangata whenua. This approach can be a virtue, allowing adaptation to local needs. Often there are more problems than advantages with this approach. Problems arise if there are barriers to that relationship. This approach could be limited by ignorance or uncertainty about Treaty obligations. Incentives may need to be provided for those implementing the policy to gain more knowledge and to use their initiative.

6.5 Effective Iwi Participation

Central and local government are increasingly encouraging iwi participation, especially after the creation of Te Puni Kokiri (Ministry of Maori Development) and the move away from devolution to mainstreaming so that appropriate Crown agencies retain authority over programmes. All levels of government have been set the task of recognising tribal authority (State Services Commission, 1993).

6.5.1 Minimum Standards

The standards imposed on local councils by the RMA are minimal. The RMA states that the councils 'shall have consideration of the principles of the Treaty of Waitangi'. The government could have drafted stronger statutory recognition of the Treaty creating clear mandatory obligations for local authorities. Presently local government are being asked to interpret the Treaty principles and incorporate these into policy.

The ability to monitor and quantify the process will influence the effectiveness of the delivery of treaty provisions. To measure service delivery to Maori is positive, and in the interest of certainty, consistency, and efficiency but Maori have a right to define what efficiency means. There needs to be some debate over formulation of guidelines rather than simply setting minimum standards.

6.5.2 Resources

Recognition is necessary of the massive logistics of coordinating iwi to have an effective role in decision-making. Financial and technical support is needed if iwi are to participate effectively. Accessibility of information is crucial if iwi participation is to be meaningful. Local bodies must know which issues to consult on, and facilitate a flow of useful information both ways. Where possible councils and iwi should look for common goals and objectives. If nothing else this can facilitate a solid base upon which iwi can stand. Councils may appreciate that there are common concerns as well as those arising out of a uniquely Maori experience in New Zealand. The law permits flexibility in approaching the Treaty and by developing alternative scenarios there may be new opportunities. Enterprises such as joint ventures and co-management strategies offer the

possibilities of shared responsibility and benefits to both iwi and local government.

6.5.3 Problems with Consultation

It is not difficult to imagine the continuing frustration which the RMA perpetuates among the Maori community. Considering the lack of clear direction from central government and the highly contentious nature of these issues in the 1980s it is not surprising that local government has not always been strong in seeking to empower iwi.

Maori are then left in the situation of receiving as much benefit from the relationship as their human and capital resources can sustain. Iwi are already having to pick and choose which resource consents to oppose. There is so much development occurring, which the government is encouraging through its export-led recovery principle, that Maori must literally let many issues pass, and deal with those which can set a precedent for future planning in their areas. Resource right submissions and the procedures for objection are very complex and expensive to lodge under the RMA.

The personalities of negotiators on both sides will play a part in the success or failure of consultative practice. Discretion limits the amount of control decision-makers have over implementing any decisions and is a fact of organisational life related to motivation, morale and reward.

6.6 Property Rights

Much of the Treaty debate, while acknowledging historical grievances, has defined them as property rights issues. Solutions to this involve: restoration of Maori land; land vested to iwi which could allow economically viable business opportunity with the possibility to be managed for profit; compensation in monetary terms; and either a share in fishing and mineral rights, which might include the activities of fishing and mining, or a share in the resource rentals. Maori would need appropriate legal structures so that they could operate efficiently in the commercial world, but retain a sense of tradition and protocol (Anastasiou et al: 9-10). Solutions may involve the less taxing problem of negotiated settlement. This would leave the Crown in a favourable position considering the enormous resources available to it to engage in this process. Iwi have had to negotiate for the return of substantive assets or compensation for such assets and to consult with every level of government. This has placed a considerable burden on Maori. Inadequate resources threaten the achievements of meaningful consultation and may lead to token attempts at fulfilling Treaty obligations. Issues of devolving management responsibility and recognising rangatiratanga were given token mention in throughout the RMLR process. On the other hand one discussion paper produced for The Ministry for the Environment went as far to suggest the administration of some resources by iwi governments. Clearly there was some support for a recognition of rangatiratanga from Pakeha.

6.7 Delegation of Treaty Responsibilities

The Waitangi Tribunal has made a strong statement as regards to delegation of power to local government under the RMA (Wai 304). The Treaty states that the

Crown is obligated to protect Maori rangatiratanga. However the RMA does not recognise this obligation.

The Tribunal concludes that the Resource Management Act 1991 is 'fatally flawed' and, "...it appears that in promoting this legislation the Crown has been at pains to ensure the decision-makers are not required to act in conformity with and apply Treaty principles". p 154 (ibid). Rangatiratanga can apparently be satisfied by a mere "consideration" under the RMA.

This does not fulfil the Crown's active duties in protecting rangatiratanga as stated in the Crown Principles or the more sophisticated principles established by the Waitangi Tribunal.

The failure of the RMA to take account of ownership issues surrounding resources means that development of resources under claim can still take place. This is a cause of concern for iwi. The Waitangi Tribunal is already coming across these contradictions. The Tribunal issued a preliminary report on the Te Arawa Representative Geothermal Resource Claims in 1992 because of reasons of urgency. The claimants were seeking a clarification of their rights as guaranteed in the Treaty of Waitangi. They sought a ruling whereby the Bay of Plenty Regional Council would be prevented from notifying a management plan in respect of a geothermal field, which was the subject of a Maori claim. The claimants' beneficial interest would have to be determined first. Council for the claimants was concerned that once a public notice is given the statutory timetable for hearing and deciding the issue will set and whether or not the tribunal has ruled on the case the Regional Council will have to make a decision (Waitangi Tribunal 1993: 11). Too much haste at this stage will preclude options which are consistent with the Treaty being adequately considered (Ibid).

6.8 Transfer of Authority

Under the provisions of the RMA, Section 33 (1) (a) it may be possible for the transfer of functions from a local authority to an iwi authority (Soloman and Schofield, 1992: 76). Transfer of power is the prerogative of the territorial authority and certain criteria have to be met first. The criteria are: that the transfer must represent a community interest; that it must result in greater efficiency; and that the transferees have particular technical capabilities and expertise. These requirements need not be restrictive, especially with the considerable resources and expertise with which local government are already endowed.

6.9 Paradigm Shift

Finally the RMA can be seen as more than just a regulatory way to rationalise planning. It may be a reflection of a paradigm shift in thinking towards a more sustainable future. There is, although constrained by an economic context, a distinct and very real 'spirit' behind the words. Perhaps what is required is a consideration of the 'spirit' of the RMA as a new approach to the future for New Zealand. A change, particularly in the Pakeha perceptions of the environment is encouraging and acknowledges that the two cultures which were once worlds apart have gained some common ground.

CHAPTER SEVEN

BEYOND CONSULTATION

Maori participation in the management of resources is limited and a number of problems exist within the process of consultation. Is there an approach beyond consultation?

This chapter will discuss the notion of reciprocity as an approach to improving the implementation of policy which will focus on the relationship as a partnership which involves a process of active dialogue.

7.1 Cultural Expression

For Maori and Pakeha to have meaningful dialogue the process of communication may be better achieved if it reflects integrity and sincerity which will enable both parties to the Treaty an expression of not only their views and opinions, but also the underlying reasons behind these. Trust can be an important component in any complex process between people. The Crown could express this virtue by demonstrating a willingness to transfer responsibilities to iwi, allowing them to manage their own resources under principles which the iwi itself has generated. While this may not occur on any large scale for several years, the opportunities which are given to Maori, especially those transferred to iwi, will provide a source of self-esteem and allow the incorporation and expression of 'traditional' values into a contemporary context. If Maori people can develop those values into principles of environmental behaviour that Pakeha can 'see' as an expression of the ethic of 'guardianship' or 'kaitiakitanga' this may reduce any 'suspicion' which

Pakeha have as to the value of an indigenous cultural expression in a world dominated by Western values and culture.

Maori are in a double-bind as far as becoming active participants in resource management. They retain an ability to articulate the treasured values and customs that emerge from living from the land and they are the only people who can identify in that sense of being tangata whenua but must do this within the cultural confounds of Pakeha etiquette and custom. While Pakeha have rights to their own ritual behaviour and cultural expression often this can limit and unfortunately degrade Maori cultural expression. There is not necessarily a conscious bad will behind cultural disagreements and indeed this will inevitably be a part of the process of cross-cultural communication. What could be acknowledged is that presently it is Maori who are usually put in the position of compromising their world view.

It will serve Pakeha and Maori alike, to become intimately aware of not only the cultural expression of each other but also the culture which emerges as a result of that coming together. If Pakeha are sincere about honouring the 'principles' or the 'spirit' of the Treaty then the opportunity to express ones culture and identity might be recognised to its fullest extent. The opportunity to advise and be consulted may finally lead to a return of direct management and control over natural resources. It is then that Maori will have an opportunity to demonstrate that their are alternatives to the present philosophies of control and domination of the environment. In light of the debate over sustainability as a concept and an ethic to be put into practice the Maori world view as regards to the maintenance of the integrity of the environment could be a valuable way to integrate Western notions of sustainability with indigenous practice.

To qualify this it seems unlikely that this will begin on a large scale. People in New Zealand are still coming to terms with the emergence of Maori expression in New Zealand. After all, the Hunn Report which recommended the assimilation of Maori was released only 32 years ago. The view that Maori have lost any ethic they might have had as regards kaitiakitanga ignores the evidence. Firstly that Maori language and culture have survived at all to the 1990's is a credit to the adaptability and tenacity of Maori 'spirit', deriving from their iwi, hapu and whanau. Secondly, most of the Maori population had not been immersed in the urban environment until the 1960's, with many being brought in their own within their own tribal boundary's till then. By passing some traditional management in small scale fisheries and land development may ease this "burden of proof" from Maori as to the credibility of notions of Kaitiakitanga. In this way Maori cultural expression may be seen as a valuable. It will be impossible to gain this trust if Pakeha do not transfer responsibility. Now perhaps decision-makers can realise the power they hold as the majority of decision-makers in the area of natural resource management.

It may sound like a simple formula but may be profoundly difficult. Pakeha cultural expression tends to create hierarchical institutions which shape the relationships of those within them. Once power or status is given, then this is not easily passed on unless something of greater value can be gained. It seems likely that giving kawanatanga to the Crown in 1840, Maori too expected a return for this privilege. Decision-makers of today have an opportunity to reaffirm that obligation. It will not be easy but it would be unfortunate if the context of the situation were assumed to be that of to equal partners. This is not the reality. Transferral of responsibility is only the beginning. The Treaty may provide a basis for an alternative interpretation of what appears to be a tension between on the one hand "powers of sovereignty", presently held by the Crown and on the other, rangatiratanga. If it is viewed as a partnership the tensions can be thought of as

opportunities for the growth of both cultures. Interpretation of the Treaty may reflect the individual values of the interpreter. The difference between the interpretations of Maori and Pakeha can then be seen in the perspective of two valid interpretations from different social and historical origins. By evaluating the Treaty from your own social context a valid analysis of history would enable critical reflection of their own world. Instead of Pakeha approaching the Treaty in the sense of what does this mean to Maori, it could be a more valuable approach if they asked what does the Treaty mean personally in light of their own experiences.

This approach may challenge western philosophies of thought as outlined in Chapter 4 . That these are incorporated into the present institutions in New Zealand is an underlying element to the process of cross-cultural communication which risks being tokenistic if both parties do not acknowledge their own identity. This can lead to the definition of Maori as “other”, as “different” where western cultural norms are valueless and unseen. These philosophies have prescribed the relationship between the Crown and Maori.

7.2 An Alternative Approach

In the past Western doctrines and values have dominated the Crowns approach to Treaty grievances. Maori have not been satisfied with this approach. If Treaty issues were addressed with the philosophy of reciprocity in mind this would provide an alternative approach to questions of claim settlement which are an integral part of resource management in New Zealand. It is argued that this would be more beneficial to the process

The resolution of Maori grievances is currently difficult in a society where Maori culture expression competes with “other” groups for recognition. This might be due to the paternalistic approach of those people in authority who define Treaty issues as a “Maori problem”. This approach has allowed the Crown to hold a position of power over Maori.

The alternative approach of reciprocity moves away from this traditional approach. Paternalism might be avoided if Maori were given the opportunity to define their reality to the decision-makers defined within a Maori context. This contextual narrative may avoid the need to use moral grounds as a basis for Treaty resolutions. This has sometimes resulted in the fear, anger and emotion which emerges in the wider area of human rights issues. In any act of giving in a cross-cultural sense however, there is a obligation on behalf of the recipient which is over looked by this traditional approach. It is more than just an act of giving as in the philanthropic sense. Accompanying the ‘gift’ is a sense of commitment to the relationship. In receiving there are also obligations with the fundamental difference in this notion being that in contrast to an exchange on the market, these obligations are not specified or quantifiable. It is the internalisation of the obligation, the concept of reciprocity which creates a non-contractual obligation in a sense that there is a spirit or goodwill underlying the exchange. In receiving benefits there is an obligation to make a return which may relate less to the market value of the ‘gift’ and more to our fundamental humanity. This in essence is an approach based on reciprocity. These notions can be found in many cultures including Maori.

7.3 Partnership

Arguably Maori have made significant sacrifices in the spirit of partnership. An approach of reciprocity might allow for the concept of partnership to be recovered in its original form how it might have been first envisaged. Ideally, in a relationship of partnership decisions will be made by both participants. Maori views must be more than considerations if partnership is to operate as a real and meaningful concept. Ultimately, Maori must share the power of decision-making which Pakeha presently control.

There is an obligation not only by the Crown but by New Zealand society to honour the Treaty. The Treaty is the founding constitutional document of New Zealand. Despite this a large number of New Zealand people do not understand the implications of the Treaty. It is perceived that Maori are in a privileged position and given special treatment. This approach has led to animosity between Maori and Pakeha. The issue of providing compensation for grievances where there is clear breach of the Treaty would be even harder for these people to accept. It is easier to accept compensation for a specific breach rather than acknowledging the spirit of the Treaty. It is also easier to justify a direct "exchange-type of resolution to the people of New Zealand, who are not directly involved in the debate, such as the "Sea Lords" deal which extinguished the notional Maori commercial fishing right, in exchange for defined property rights in the commercial fishery.

7.4 Compensation

The vagueness of the previous resource management law hindered the negotiation of compensation for Maori claims. The RMA does not allow for the

fact that some resources are still under claim and assumes the authority to give resource consents for land that is claimed by Maori or alternatively land which may be used to redress other grievances.

7.5 Structural Conformity

Implementation of legislation attempting to incorporate the Treaty will be limited by the structural and philosophical norms of New Zealand society. Institutions in society are constructs reflecting social norms and values. There is a strong cultural aspect to these institutions. The present social structures perpetuate this monocultural approach. It is easier to establish and codify firm rules of behaviour and formal channels of communication than venture flexible and open relations (De Vries: 15).

Participation in the institutions can sometimes impart a sense of 'legitimacy' in people which encourages conformity (Becker: 165). It has even been suggested that, "the institutions shape us more than we shape them" (Kauffman: 263).

As western societies move towards goals of "sustainability" it is a concern when the nature of our institutions constrains our ability to meet these goals. The institutions might be of greater value if they could accommodate changes in societies values. If society is concerned about incorporating a certain principle or 'virtue' in behaviour (for example reciprocity) then the social structures ought to exist which are necessary for this (Becker: 164).

In Chapter 2 the social contract of the welfare state was discussed and an integral part of the agreement was seen to be the notions of reciprocity and consistency, of mutual concern and continuity (Thompson: 25). Each generation places a faith in

those after and those before that they would contribute an amount which would ensure that the system sustains itself. The essence of these ideas provide a European welfare state perspective on some of the guarantees expected beyond the written word. In terms of the Treaty and the obligations to Maori are there any obligations beyond a legalistic and defined set of minimum standards under the RMA?

7.6 Maori Values and the RMA

The Treaty obliges that the Maori world view be considered as an integral part of resource management in this country, not merely one of a number of requirements.

"Rendered into its most simple terms, the obligations of the treaty are about attitude, about demonstrating a willingness to take a generous and flexible approach to the duty under section 8, and to upholding the spirit and compliance with the principles of the Treaty of Waitangi (Crengle: 24)".

Recent legislation, including the RMA, incorporates the Treaty and its principles. This illustrates changing tendencies in Pakeha approaches to Treaty issues. It is acknowledged by central government that there is a need for recognition of, and compensation for, the resulting grievances. Its capacity to do this is where the issue of how to compensate for the significant size of the claims comes in. Since 1984 the government has eschewed balancing social priorities with economic ones, but has focused instead on social change through economic reform. Issues of compensation have therefore been difficult to reconcile with this approach. It is important that in matters of social equity the external effects of development on the indigenous people of New Zealand is incorporated.

In the Motunui Report (1983) the Waitangi Tribunal saw that,

“A Maori approach to the Treaty would imply that its wairua or spirit is something more than a literal construction of the actual words used can provide the spirit of the Treaty transcends the sum total of its component written words and puts narrow or literal interpretations out of place” (Motunui Report: 10.1).

There would seem to be more to the Treaty than what is written into the document. When addressing the implications of the Treaty there is a need, when interpreting legislation, to look beyond the text and consider the wider implications of the document.

7.7 Reciprocity

In a modern society reciprocity will have to be reflected structurally and functionally as an integral part of administrative structures (De Vries: 9). Reciprocity is an alternative to the procedures of hierarchical relations (ibid) which encourage self-centering and competition and provides no incentive to cooperate. The individual need not take on responsibility for their actions in achieving this higher status as it is a natural part of society and nature. This ego-centric view has given rise to serious tensions (Peursen: 22). For instance, the morals of business and political relations often put the individual in the dilemma of accommodating personal ethics (disposition, intention) and the law (public rules and contractual obligations) (ibid). Political and economic life involves resolution of conflict and an ethic of reciprocity in the approach to conflicts in the resource management and environmental domain is would be appropriate (O'Connor: 45).

7.8 Methods of Reciprocity

Reciprocity can be integrated into society in 3 ways.

1. Move away from the egocentric view. That is, to be aware of responses given to others rather than absorbed by one's own initiatives. This is incorporating reflexivity.
2. Learn to create possibilities for others to be responsive, in other words to focus on the potential of others.
3. The environment within which people live needs to be explained in a broader context and hence be made more relevant and interesting to the individual (Adapted from Van Peursen: 37-39).

Reflexivity will be central to this approach. Consideration of the view of others and the origins of those views allows for the analysis of the formation of attitudes. In the context of the Treaty this requires an approach which goes beyond self-interest and ignorance, but rather concentrates on the realities of others. Reciprocity then, would require Pakeha to reflect on what the Treaty means to them. If the validity of the Treaty is often questioned because of its failure to specify more clearly the relationships then this might occur because of an individual's perception of the world.

"Those whose approach to understanding and generating decisions is based on lateral thinking, intuition, maverick creativity, religious insights, emotional subjectivity, life experience, and common sense are correspondingly disadvantaged" (Benland: 457).

If some alternative means of resolving Maori grievances is not developed then action which is taken, even with the best of intentions, may leave underlying issues still unresolved.

"As things stand it is anything but clear whether Maori grievances would be appeased by a granting of compensation in "property rights" (land, ITQs and the rest), however large, unless also this was accompanied by a sensibility to the nature of the management obligation as one involving ongoing gift exchange. Compensation in the static sense of a property redistribution would inflame conflicts elsewhere, and could, if accompanied by hostility or patronising overtones, also prove sterile or even poisonous to the Maori participants themselves" (O'Connor: 45).

7.9 Conclusions

Maori participation in the management of natural resources is restricted to the process of consultation. Since Maori are a minority their views are often not seen as in the interest of the majority so their values are not incorporated into decisions. If the Treaty is to be honoured the system needs to change to accommodate the values of Maori in a more inclusive way.

The people who are in the position to make these decisions can be educated about the Treaty and its implications for Maori but if resolution of Maori grievances is to be resolved then the decision-makers will also have to look within themselves. The Treaty debate is often framed in a way which defines the "problem" in a narrow sense. This paper concludes that cross-cultural dialogue will continue to be frustrating for the tangata whenua.

In conducting this dialogue the concept of reflexivity will be useful. This notion implies more than just reflection, it also implies action. It requires of the individual a strong sense of social action. Within any social decision-making

process there is a need to look at both a personal and professional level, asking ourselves why we do what we do and could it be done any differently.

The passing of the RMA has allowed Maori participation in the management of natural resources. Maori contribute through the process of consultation. It has been argued that consultation contradicts Maori rights as guaranteed by the Treaty of Waitangi and their views restricted by the values of the predominantly non-Maori decision makers and the western philosophies that dominate social interaction in this country.

The concept of reciprocity could increase the effectiveness of the consultation process if those who are working in the area of consultation recognise that some basic virtues have been accorded an inferior value behind scientific and objective thinking in western philosophy (Durie: 117). This has caused detriment to tangata whenua. In western society there is a focus on individualism which has overlooked the place for collective institutions such as iwi and hapu.

Individualism has resulted in the loss of personal values, convictions and attitudes as important by the wider society in the interests of objective and detached methods of organising people such as those inspired by neo-classical economics. This view of the centrality of the individual before the collective can be traced back to Hobbes who argued that people were incapable of collective action for the common good (Berkes et al: 49). This reflects a view of the natural order as primarily shaped by conflict rather than cooperative practice (Ibid: 48).

In smaller, locally based communities, relationships are a part of the culture of people and hence a part of their social contract. Rousseau considered that in some egalitarian countryside communities the 'rule of law' came from within (endogenously) and did not require external authority (exogenously) (Berkes et al:

50). Krotspotkin followed this line when looking at informal cooperative societies in Russia (ibid). In recent years communities sharing these characteristics have been a focus of interest.

Maori now have greater access to the management of natural resources. Their concerns are heard and this is an important step. In devolving some responsibility and incorporating the Treaty into local government there is an opportunity for partnerships to develop. There is scope for changes beyond the words of the Resource Management Act 1991 are ideas which have been developing for over 150 years.

The relationship may well be reflected in new institutions and a new language. Maori and Pakeha are seeking out knowledge from each other with a new enthusiasm which harks back to the first few years following the Treaty, when Maori dominated the economic activity of this country. This time around Pakeha may be more inclined to listen and learn from Maori experience.

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